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Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Plight of Unaccompanied Migrant Children

Following HRC Resolution 25, which addresses barriers to justice for asylum-seeking, refugee and unaccompanied migrant children, Human Rights Advocates calls attention to the surge of Central American and Mexican unaccompanied minors and their mistreatment both in their home countries and at the United States border. Addressing this issue will be a step toward better investment in the rights of the child.

The first concern regards situations in the sending countries. More than 67,000 unaccompanied minors arrived in the U.S. during 2014, over 50,000 came from Central America.[1] The Northern Triangle countries of Guatemala, El Salvador, and Honduras experience a multitude of problems forcing children to leave their home countries in search of safety. Powerful criminal organizations contribute to violence and intimidation, which they use to further political and economic interests. Mexican drug cartels and transnational gangs carry out lethal attacks against rivals and those who defy their control, such as children who resist gang recruitment. Honduran child migrants are from some of the most violent regions in the world; in 2012 Honduras's murder rate was 90 per 100,000, the highest in the world.[2] State institutions are unable or unwilling to control the violence and influence of organized gangs. These institutions are further weakened by gang infiltration and intimidation. In Guatemala, 98 percent of crimes do not result in prosecutions.[3] Because gangs have appropriated much of Central American territory and authorities are unable to curb the violence, children affected by gang violence are almost always forced to leave the region.

Although gang violence and the culture of criminal impunity in Northern Triangle countries accounts for a large portion of forced displacement, poor economies are another factor pushing children to the U.S. Overall, Guatemala, El Salvador, and Honduras are among the poorest nations in Latin America with 26 percent, 17 percent, and 30 percent of their people living on less than $2 a day.[4]

Gang violence and crime rates in Central America may grab headlines but there are also increased numbers of unaccompanied minors migrating north from Mexico. In 2013, U.S. Border Patrol apprehended over 17,000 Mexican children. Mexico's drug-war-torn states have disturbing levels of crime and violence. UNICEF reports that the murder rate of underage Mexican boys more than doubled between 2007 and 2011.[5] The UN High Commissioner for Refugees (UNHCR) found that 59 percent of Mexican minors apprehended crossing into the U.S. cited violence as one reason for leaving home.[6]

Governments in the Northern Triangle and Mexico need to do more to curb the influence of and prosecute criminal offenders. Criminal justice systems need to be rid of corruption and gang infiltration and the culture of impunity must be changed. Although these governments must do more to protect their citizens, U.S. influence on Central American gang culture cannot be ignored. For more than a decade, American street gangs have been spreading to Central America. U.S. immigration agencies have rounded up and deported thousands of criminal immigrants; in the last 12 years, U.S. immigration authorities have logged over 50,000 deportations of immigrants with criminal records to

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[1] U.S. Customs and Border Protection, *Southwest Border Unaccompanied Children: Unaccompanied Alien Children Encountered by Fiscal Year* http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children

[2] *DHS: Violence, Poverty, is Driving Children to Flee Central American to U.S.*, Pew Research Center (July 1, 2014) http://www.pewresearch.org/fact-tank/2014/07/01/dhs-violence-poverty-is-driving-children-to-flee-central-america-to-u-s/

[3] Human Rights Watch, World Report 2013: Guatemala (2013)

[4] *DHS: Violence, Poverty, is Driving Children to Flee Central American to U.S.*, Pew Research Center (July 1, 2014)

[5] UNICEF, *Mexico: Country Programme Document 2014-2018* (February 6, 2014)

[6] UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*

Central America, including numbers of gang members.[7] These deportations create a revolving door of gang members between the U.S. and Central America. Many deported gang members will return to Central America, help their gang achieve wider influence and power, then return to the U.S. until they are apprehended and deported again. This deportation policy aimed originally at breaking up U.S. street gangs has ultimately helped spread gangs across Central America. The U.S. must take responsibility for the effects of this policy and recognize the obligation to assist Central American countries to fight against gang violence.

The second concern regards the treatment of unaccompanied minors at the U.S. border. The mistreatment of unaccompanied minors at the border manifests in several ways. First, U.S. immigration policy is discriminatory toward Mexican children migrants. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) aims to protect foreign nationals who are victims of trafficking or violence and flee to the U.S. Under this law, Central American children apprehended at the border are transferred to the Office of Refugee Resettlement (ORR), where they receive shelter and await their immigration hearing. In contrast, the law deprives minors from contiguous countries of getting these same rights. In practice Mexican children are most harshly affected by this distinction. When Border Patrol agents apprehend Mexican children entering the U.S. they screen them on the spot and have 48 hours to get them out of Border Patrol custody. Within that timeframe the TVPRA states that agents must ascertain three things before deporting a Mexican child: (1) they aren't victims of trafficking, (2) they don't have a credible fear of returning home, (3) they are able and willing to voluntarily return to Mexico.[8] If the answer to any of those points is unclear, the child must be transferred to ORR and into the same process as all other unaccompanied children. Though this system may seem fair on paper it is discriminatory in practice. A UNHCR evaluation of U.S. Customs and Border Protection's screening of unaccompanied Mexican children found a bias against recognizing their need for protection and noted that these children are almost always returned to Mexico and that many Border Patrol agents were under the impression that Mexican children are automatically deported.[9] In 2013, only 4.5 percent of the over 17,000 Mexican children apprehended by Border Patrol were transferred to ORR custody.

This current scheme is discriminatory. Authority to screen Mexican children should be transferred to ORR or another agency equipped to deal with trauma and vulnerable children, and ensure that legal representation is provided. Border Patrol's primary goal is to stop the illicit flow of goods and people into the country, the nature of their work means agents are usually intimidating and sometimes have forcefully apprehended the children they end up screening. The screeners do not know how to ask about abuse or trafficking and most interviews are conducted in a public environment that children find threatening.[10] Under these conditions it is unsurprising that Mexican children never have a chance to tell their stories and seek protection.

Second, unaccompanied minors are often transferred to detention centers or holding cells in violation of international and domestic standards. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status.[11] Unaccompanied children in detention are subject to brutal conditions including but not limited to, freezing concrete rooms with constant artificial light, lack of adequate food, sleep deprivation, and no contact with family or legal services. Unaccompanied children are also often detained much longer than the 72-hour limit set by U.S. guidelines.[12]

Finally, unaccompanied minors with credible fear of returning home are too often deported. In fulfilling obligations under the Convention on the Rights of the Child, states shall not return a child to a country where there are substantial

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[7] Robert J. Lopez, Rich Connell, Chris Kraul, *Gang Uses Deportation to its Advantage to Flourish in the U.S.*, LA Times (October 30, 2005) http://www.latimes.com/local/la-me-gang30oct30-story.html#page=1

[8] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 (2008)

[9] UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*

[10] Washington Office on Latin America, *Forgotten on La Frontera: Mexican Children Fleeing Violence are Rarely Heard* (January 22, 2015)

[11] U.N. Comm. on the Rights of the Child, General Comment No. 6, ¶ 18, CRC/GC/2005/6 (Sept. 1, 2005).

[12] El Pilkington, *Migrant Children Endure Border Patrol Ice Boxes*, The Guardian (January 26, 2015) http://www.theguardian.com/us-news/2015/jan/26/migrant-children-border-patrol-ice-boxes

grounds for believing that there is a real risk of irreparable harm to the child.[13] Unaccompanied minors from Mexico and Central America are fleeing brutal violence and have substantial fear of returning home. Through proper investigation techniques, age and gender appropriate environments, and therapeutic training immigration officials will be able to ascertain candid statements from child migrants. These statements must be taken seriously if they indicate a credible fear of return and these children must not be deported.

HRA asks the HRC to urge state parties:

1. To follow the dictates of HRC Resolution 25 by transferring the screening of unaccompanied children from border patrol to an agency with expertise in child welfare, developing proper screening protocols and ensuring that interviews are conducted in private non-threatening environments, and providing children with legal representation.
2. To protect children in the countries of origin by abolishing the culture of impunity for gang violence and implementing independent and impartial judicial mechanisms.

[13] *Supra* note 11.